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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1953

No. 1

OLIVER BROWN, ET AL, *APPELLANTS*
VS.
BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL, *APPELLEES*

Appeal from the United States District Court for the District of Kansas.

BRIEF FOR THE BOARD OF EDUCATION, TOPEKA, KANSAS, ON QUESTIONS PROPOUNDED BY THE COURT.

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I.

STATEMENT

This brief is filed in response to the order of the Court, entered June 8, 1953, propounding five questions on which briefs were requested. Since the date of that order the Topeka Board of Education on September 3, 1953, duly adopted the following resolution:

> "Be it resolved that it is the policy of the Topeka Board of Education to terminate maintenance of segregation in the elementary schools as rapidly as is practicable.";

and on September 8, 1953, it passed a motion, ". . . that segregation be terminate in the Southwest and Randolph Schools

this year . . .". Prior to the adoption of said resolution the Board of Education maintained twenty separate elementary schools for white children, each of which schools was attended by white children residing within a limited geographic area or boundaries near the school, and it also maintained four separate schools for negro children with large area or district boundaries. Negro students living some distance from school were furnished transportation to and from school if they requested it.

Since September 8, 1953, negro children living within the area boundaries of the Southwest School and the Randolph School are assigned to and are attending those schools along with and equally with white children. The Board is still maintaining the four separate negro schools and eighteen separate white schools.

By reason of its having resolved to terminate segregation in the elementary schools of Topeka "as rapidly as is practicable," the Topeka Board of Education no longer has an actual interest in the controversy over the constitutionality of segregation in such schools, and it therefore prefers to refrain from arguing and briefing Questions 1, 2, and 3 as propounded by the Court, which are directed to the constitutional questions involved.

The Board of Education of Topeka is, however, actually and directly interested in Questions 4 and 5 as propounded by the Court. Briefly summarized, we contend;

First, That termination of segregation in the elementary schools of Topeka will involve difficult and far reaching administrative decisions, affecting nearly all school children, nearly all teachers, and nearly all school buildings, so that to attempt to accomplish it in a hurried or summary manner will be both impossible and impractical.

Second, The public interest, including the interest of negro children in Topeka, equity, and practical consider-

ations require that termination of segregation in the elementary schools of Topeka shall be permitted to be accomplished in a gradual and orderly manner.

II.

QUESTION 4(a) SHOULD BE ANSWERED IN THE NEGATIVE: AND QUESTION 4(b) IN THE AFFIRMATIVE.

Both Questions 4 (a) and 4 (b) contemplate the possibility that this Court might issue a broad, general order requiring abolition of segregation in the elementary schools of Topeka, rather than a limited order relating to the rights of the few particular negro children who are parties to this suit.

Such a general order would necessitate almost a complete readjustment of the elementary school system as now maintained in Topeka, so far as fixing attendance areas and boundaries for all the elementary school buildings in Topeka; it would require the transfer of many white and negro children from the schools they now attend to other buildings, as well as the transfer and assignment of many teachers to serve the resulting new classes in the various buildings.

Many of the grade schools now used for white children in the city are already full, and some are badly overcrowded. A school building program has been carried on and is being carried on now. The Southwest School was completed and opened in 1952; two other new schools are under construction now, and the Board is deciding on new sites for still two more schools to be constructed as quickly as possible. All five of these new buildings are, or will be, in areas where there have been new housing projects, and where the school population is now and probably will remain predominantly white children. These schools will probably not serve many negro children even when segregation is finally abolished.

The majority of the negro school population resides in a few scattered areas throughout the older parts of the city, and is not evenly distributed throughout the entire city. Many negro children live nearest to white schools which are already overcrowded. To transfer and admit these negro children to the schools nearest their residences will require either that many white children now attending such schools will have to be transferred to other schools, or that annexes will have to be provided. In short we have little doubt that the area boundaries of the existing white and negro schools will have to be redefined. This will necessarily require reassigning students, both white and negro, to schools which they do not now attend, and this in turn will require changing the classes to fit the new children in, and may involve transferring teachers from building to building as well.

It is the plan of the Board of Education of Topeka to make the transition from segregated to integrated elementary schools gradually and in an orderly manner on a school by school basis, but as rapidly as is practically possible. Such changes will be made at convenient times between semesters, and in such a manner that the administrative decisions and changes can be conveniently and efficiently handled without interrupting the continuity of the regular school program. The Board has discussed its policy and plans in open, public meetings attended by members of both white and negro races. It has invited and secured cooperation and suggestions, and the public generally in the community is assisting the Board in achieving its objective of terminating segregation "as rapidly as is practicable."

If this Court should enter an order to abolish segregation in the public schools of Topeka "forthwith," as suggested in Question 4 (a), the Topeka Board would, of course, do its best to comply with the order. We believe, however, that it would probably require that the regular classes be suspended, while the many administrative changes and adjustments are being

made, and while the necessary transfers of and reassignment of students and teachers are being made. Important decisions would have to be hurriedly made, without time for careful investigation of the facts nor for careful thought and reflection. Most decisions would have to be made on a temporary or an emergency basis. We believe the attendant confusion and interruption of the regular school program would be against the public interest, and would be damaging to the children, both negro and white alike.

We respectfully urge that in making and issuing its decree this Court has equitable power and discretion to shape the decree and to control its execution in such a manner as to protect the public interest:

United States v. Morgan, 307 U. S. 183, 81 L. Ed. 1211, 59 S. Ct. 795:

> "It is familiar doctrine that the extent to which a court of equity may grant or withhold its aid, and the manner of moulding its remedies, may be affected by the public interest involved." (p. 1219, L. Ed.)

Virginia Ry. Co. v. System Federation No. 40, 300 U. S. 515, 81 L. Ed. 789, 52 S. Ct. 512:

> "6. The extent to which equity will go to give relief where there is no adequate remedy at law is not a matter of fixed rule, but rests rather in the sound discretion of the court.
>
> "7. Courts of equity may, and frequently do, go much further to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." (Syll. 6. and 7.)

Securities Exch. Comm. v. U. S. R. and Imp. Co., 310 U. S. 434, 84 L. Ed. 1293, 60 S. Ct. 1044:

> "7. A court of equity has discretion, in the exercise of jurisdiction committed to it, to grant or deny relief upon performance of conditions which will safeguard the public interest." (Syll. 7.)

Because the Board of Education believes that a "forthwith" order to abolish segregation in the Topeka school system would seriously damage and interrupt the operation and administration of the schools and would be plainly against public interest, and because it believes that an order to abolish segregation, in the public interest, should permit "an effective gradual adjustment"; we respectfully submit that Question 4 (a) propounded by the Court should be answered in the negative, and that Question 4 (b) should be answered in the affirmative.

III.

QUESTIONS 5(a), (b) and (c) SHOULD BE ANSWERED IN THE NEGATIVE

If segregation in the public schools of Topeka is to be abolished by decree of the Court permitting an "effective gradual adjustment" as suggested in Question 4 (b), then the Board of Education should be permitted to manage the readjustment, subject only to the usual and normal jurisdiction always retained by a court of equity for the enforcement of its decree or judgment.

We have heretofore pointed out the many intricate administrative decisions which will be involved in the transition to an integrated system of grade schools in Topeka. These are the problems and decisions which the Board of Education is organized to handle. Clearly there will be considerable administrative expense involved in making the adjustment. In Kansas the Board of Education is required to comply with cash basis and budget laws in connection with such expenditures, and taxes must be levied for such expenses within the levy limitation laws. Thus the necessary adjustments for a transition from segregated to integrated schools will affect nearly all the other administrative actions of the Board of Education. For this Court or a special master to undertake to con-

trol the necessary readjustments or to draw detailed orders and decrees will involve them in the control and direction of the administration of the entire school program either directly or indirectly.

We believe such detailed control by this Court or a special master is unnecessary and undesirable. We therefore submit that Questions 5 (a), (b) and (c) should be answered in the negative.

IV.

QUESTION 5(d) SHOULD ALSO BE ANSWERED IN THE NEGATIVE

If this Court should enter an order or decree as suggested in Question 4 (b), there is no need for a more specific or detailed decree in this case.

The Board of Education of Topeka has already on its own initiative resolved to terminate segregation in the elementary schools "as rapidly as is practicable" and has already taken its first step toward that end by providing for an integrated system in two schools which were formerly used only for white children. Certainly at this time there is no need for a more detailed decree than the decree suggested in Question 4 (b). The District Court will always have jurisdiction to enforce the decree. If the need for a more specific decree should arise in the future, the District Court will have ample power to make such a decree under its general power to enforce the judgment and decree of the court.

We respectfully submit that Question 5 (d) should be answered in the negative.

Respectfully submitted,

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